IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl..No. 7018 of 2007()

CRIME NO.830 OF 2007 OF THODUPUZHA POLICE STATION

: PETITIONER

A.K.BABU, S/O. KORA,
ANIKATEL, OLAMATTAM, THODUPUZHA.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SMT.PREEJA. P.VIJAYAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
(CR.NO.830/07 OF THODUPUZHA POLICE STATION).

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7018 of 2007

Dated this the 19th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a crime registered for the offence punishable under Sections 452 and 376 r/w 511 I.P.C. The crux of the allegations against the petitioner is that he had trespassed into a house in which the victim was employed as a maid servant. He allegedly attempted to commit rape on her. The petitioner had earlier insulted the said maid servant by exposing his private parts to her when she had gone to the river side. According to the victim, the petitioner is known to her. She knew him by the name Bose, whereas his real name is Babu. In the F.I statement as also before the doctor, the assailant has been named as Bose. Investigation is in progress. The petitioner apprehends imminent arrest. The alleged incident took place on 11.10.07.

2. The learned counsel for the petitioner submits that the allegations are totally false. The employer of the defacto complainant - a doctor, has reasons to be inimical to the petitioner. There was a complaint regarding inadequate treatment of a patient earlier. The petitioner had taken up the cause of that patient as a member of the public. Because of that, the doctor couple were ill disposed to the

petitioner. They are making totally false allegations making use of the maid servant employed in their house. The person named in the F.I.R is not the petitioner. When opportunity presented itself false allegations are being raised against the petitioner to vex and harass him.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is no element of false implication at all. It is true that the petitioner now calls himself as Babu. But his name was perceived by the victim as Bose for reasons which are well explained by her. There is no dispute regarding the identity of the person notwithstanding the incongruity about the name of the person. The learned Public Prosecutor submits that if deliberate false implication of the petitioner was the alleged motive, such a discrepancy about the name was most unlikely to occur. The learned Public Prosecutor further points out that the victim had suffered injuries and had promptly been seen by a medical officer also.

4. Considering the nature of the disputes raised, the case diary has been placed before me. I have perused the same.

5. At this early stage of investigation, I shall carefully avoid any detailed discussion on merits about the acceptability of the

allegations or the credibility of the data collected. Suffice it to say that having considered all the relevant inputs, I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-